Remarks

At the time of the Office Action, which was made Final, claims 1, 3-5 and 25-41 were pending. Claims 34-37 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,154,536 to Kuwayama (hereinafter Kuwayama). Claims 1, 5, 25-32, 38, 40 and 41 stand rejected under 35 U.S.C. § 103(e) as being obvious over Kuwayama in view of U.S. Patent No. 6,771,901 to Gennetten et al. (hereinafter Gennetten). Claim 3 stands rejected under 35 U.S.C. § 103(e) as being obvious over Kuwayama in view of Gennetten and further in view of U.S. Patent No. 5,715,487 to McIntyre et al. (hereinafter McIntyre). Claim 4 stands rejected under 35 U.S.C. § 103(e) as being obvious over Kuwayama in view of Gennetten and further in view of U.S. Patent No. 6,930,707 to Bates et al. (hereinafter Bates). Claim 33 stands rejected under 35 U.S.C. § 103(e) as being obvious over Kuwayama in view of Gennetten, McIntyre and Bates. Finally, claim 39 stands rejected under 35 U.S.C. § 103(e) as being obvious over Kuwayama in view of McIntyre and Bates.

The Applicants submit that this response at least places this application in better form for appeal in accordance with 37 CFR 1.116. To this end, the Applicants respectfully request entry of this response as it should only require a cursory review by the Examiner.

The Applicants respectfully request reconsideration. Furthermore, the Applicants request that the Office favorably consider the following remarks and withdraw the finality of the Office Action and the rejections.

The Applicants respectfully disagree with the Examiner's characterization of Kuwayama. On page 2 of the Office Action the Examiner states, "Kuwayama teaches that immediately after the user turns on the power (step 200), the user is prompted to enter an instruction (418), either via password or through fingerprint data." In support of the foregoing contention, the Examiner cites to col. 4, lines 29-37, col. 6, lines 57-67 and FIG. 4A.

The word immediately is commonly defined as "without delay or hesitation" and "with no time intervening." In *MBO v. Becton Dickinson* (Fed. Cir. 2007), interpretation of the term "immediately" was at issue with respect to claims that recited, "A method of immediately and positively precluding needlestick injury from a contaminated needle comprising the steps of ..." The Court construed "immediately" to mean "simultaneously with the needle's withdrawal from the donor" rather than immediately after some other event. In view of the foregoing and because Kuwayama shows and discloses an intermediate step (i.e., "WAIT FOR INSTRUCTION" step 202 shown in FIG. 4A), the Applicants take issue with the Examiner's contention that Kuwayama prompts a user for an instruction immediately after the device is turned on.

First, when the relevant portion of the paragraph of Kuwayama at column 4, lines 29-37 is simplified, the reader is left with, "the display 300 displays a password entry area 302 ... to prompt a person to input fingerprint data when no fingerprint is sensed by the sensor 402 at the time an instruction 418 is inputted." Although this passage discloses prompting a user to input user identification information in the form of a fingerprint, it does not disclose, teach or suggest that user identification information is received ***immediately*** after the device is turned on. At best, this passage suggests that user identification information may be received at the time an instruction is input by the user, for example by actuating a button for "picking up a scene, reproducing an image" etc. (col. 2, line 66 to col. 3, line 2)

Second, when a first relevant portion of the paragraph of Kuwayama at column 6, lines 57-67 is simplified, the reader is left with, "When the user turns on ... the power (step 200), the microcomputer 52 shifts to the instruction wait state (step 202)." Figure 4A illustrates this operation. From the foregoing, it can be appreciated that Kuwayama's device immediately enters a standby or sleep state after being turned on. In fact, it is noteworthy that Kuwayama states in this paragraph that, "the fingerprint capturer 102 captures fingerprint data from the fingerprint sensor 402 **at the time the instruction is issued (step 204)**." (emphasis added) Consistent with the Examiner-cited paragraph of Kuwayama at

column 4, lines 29-37, this paragraph does not disclose, teach or suggest that identification information is received ***immediately*** after the device is turned on because such information is received at step 204 which is after the intervening (i.e., waiting) step 202.

To bolster the Applicants' argument that Kuwayama does not disclose, teach or suggest that identification information is received ***immediately*** after the device is turned on, the Applicants direct the Examiner to column 6, line15-18, which states, "More specifically every time the microcomputer 2 received an instruction 418, it **causes** the fingerprint capturer 102 to capture fingerprint data from the sensor 402." (emphasis added) Accordingly, it is understood that Kuwayama's device operates by first receiving an instruction and then, subsequent to receiving the instruction, the device consequently proceeds in its operation by capturing a fingerprint.

For argument's sake, if Kuwayama were to teach immediately prompting for user information after turning the device on, the Applicants submit that Kuwayama would not need a waiting step 202. However, this is not the case because Kuwayama explicitly discloses and shows waiting step 202. The Applicants submit that Kuwayama's explicit teaching cannot simply be ignored. In view of the foregoing, the Applicants submit that the pending claims are allowable as they patentably distinguish over Kuwayama when taken alone or in combination with the other cited references as the cited art of record does not serve to cure Kuwayama with respect to elimination of the waiting step 202.

The Applicants respectfully request reconsideration and withdrawal of the finality of the Office Action in view of the foregoing remarks. More particularly, the Applicants respectfully request a new, non-final action on the merits or a notice of allowance as it is submitted that the cited art of record does not disclose, teach or suggest the step of receiving user identification information immediately after turning on a device.

Nevertheless, ff the Office maintains the present rejections, the Applicants stand ready to appeal. To this end, in the event that the Office declines to enter the present

Amendment, and (i) any portion of the present Amendment would place some of the claims in better form for appeal if a separate paper were filed containing only such portion or (ii) any proposed amendment to any claim would render that claim allowable, Applicants respectfully request that the Office inform Applicants of the same pursuant to MPEP §714.13.

Respectfully submitted,

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Date: October 15, 2007

CH02/ 22498831.1